IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1468 OF 2007
IN
SUIT NO.3547 OF 1998

Omer Hasan Wadhia ..Plaintiff

V/s.

Gerald Michael Misquitta & anr. ..Defendants

Mr.B.G.Saraf, advocate, for plaintiff and applicant in Chamber Summons

CORAM : A.S.OKA, J.

DATE : 14TH SEPTEMBER, 2007

P.C.

1. Heard learned counsel appearing for plaintiff in support of the Chamber Summons. He tenders an affidavit of service. The affidavit of service is taken on record and marked 'X' for identification.

2. The suit is filed by the plaintiff for a declaration that the original defendants as well as present defendants have no right, title and

interest in respect of the property subject matter of this suit. According to the case of the plaintiff, the original defendants executed a gift in respect of the suit property in favour of predecessors in title of the plaintiff. It is the case of the plaintiff that their predecessors acquired title to the suit property. The plaintiff claim to have purchased suit property.

3. By the proposed amendment, now the plaintiff wants to contend that his predecessors in title became owners of the suit property by way of adverse possession.

4. Whether plaintiff is entitled for a declaration as prayed is a question to be decided at the appropriate stage. However, by allowing amendment, the nature of the suit will not be changed. In the circumstances, Chamber Summons deserves to be made absolute.

5. Accordingly, Chamber Summons is made absolute in terms of prayer clause (a) & (b). Amendment to be carried out within a period of four weeks. The plaintiff will serve copies of the amended plaint to the defendants within a period of four weeks from the date on which amendment is carried out. The defendants will be at liberty to file Written Statement within a period of eight weeks from the date on which they are served with the copies of the amended plaint. Suit to be set down for directions on 3rd December, 2007.

(**A.S.OKA, J.**)